

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

THOMAS J. BEAL and DONNA J.  
BEAL, husband and wife,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE; AMERICANWEST BANK,  
as successor to United Security  
Bank; and FERRY COUNTY,  
WASHINGTON, a Municipal  
Corporation,

Defendants.

UNITED STATES OF AMERICA,

Cross-Complainant,

v.

THOMAS J. BEAL and DONNA J.  
BEAL, husband and wife;  
AMERICANWEST BANK, as successor  
to United Security Bank; FERRY  
COUNTY, WASHINGTON, a Municipal  
Corporation; GE CAPITAL  
(Formerly TRANSAMERICA CREDIT  
CORPORATION); CROWN RESOURCES  
CORPORATION; and TELEVISION  
ASSOCIATION OF REPUBLIC, WA,  
INC.,

Cross-Defendants.

NO. CV-10-0257-EFS

**ORDER DENYING THE UNITED  
STATES' MOTION TO STRIKE,  
GRANTING THE UNITED STATES'  
DISPOSITIVE MOTION, AND  
DENYING AS MOOT THE UNITED  
STATES' MOTION TO STAY**

Before the Court, without oral argument, are the following motions  
filed by the United States Department of Agriculture ("United States"):

1) Motion to Dismiss, for Summary Judgment On Cross Complaint, or Default Judgment, ECF No. [29](#), 2) Motion to Strike Plaintiffs' Answers to Defendant United States of America's Second Amended Answer and Cross Complaint, ECF No. [38](#), 3) Motion to Strike Plaintiffs' Declaration of Thomas J. Beal and Donna J. Beal in Opposition to Summary Judgment, Plaintiffs' Responses to Statement of Material Facts, and Plaintiffs' Memorandum in Opposition to Motion to Dismiss, for Summary Judgment on Cross Complaint, or Default Judgment, ECF No. [48](#), 4) Motion to Stay Proceedings Pending Ruling, ECF No. [55](#), and 5) related Motions to Expedite, ECF Nos. [35](#), [45](#), & [58](#). After reviewing the record and relevant authority, the Court is fully informed. For the reasons that follow, the Court dismisses the Beals' claims against the United States and the United States' counterclaims because the Court lacks subject matter jurisdiction over these claims.

#### **A. Background**

Thomas and Donna Beal reside in Curlew, Washington on a large parcel of land, which they farm. Beginning in the 1980s, the Beals entered into a number of financial documents with the United States Farm Service Agency to farm, including a 1983 promissory note in the amount of \$186,300.00, which was reamortized on a number of occasions, a 1983 promissory note in the amount of \$90,210.00, which was reamortized on a number of occasions, a 1983 promissory note in the amount of \$45,000.00, and real estate mortgages in 1987, 1988, and 1989.

On April 29, 1999, the Beals filed for bankruptcy. On November 16, 1999, an Order Confirming Chapter 12 Plan was entered. The Beals made their payments to the United States under the Chapter 12 Plan. However,

1 they are unsatisfied with their ability to earn income on their land and  
2 contend the United States, AmericanWest Bank, and Ferry County interfered  
3 with their ability to earn income from their land, including their  
4 ability to enter into contracts with third parties to utilize the land,  
5 and thereby make payments as required by the Chapter 12 Plan.

6 On August 12, 2010, the Beals filed this lawsuit asking the Court  
7 to reduce the amount of principal and interest owed by them under the  
8 Chapter 12 Plan to the United States and to determine the damages  
9 suffered by the Beals as a result of the United States' and other  
10 Defendants' failure to assist the Beals in maximizing the land's income-  
11 generating potential. ECF No. [1](#). On December 15, 2010, the United  
12 States filed a Second Amended Answer and Cross Complaint. ECF No. [9](#).  
13 A Scheduling Conference occurred on February 7, 2011, setting an October  
14 1, 2012 bench trial. ECF No. [22](#).

15 On May 18, 2012, the United States filed its Motion to Dismiss, for  
16 Summary Judgment on Cross Complaint, or Default Judgment. ECF No. [29](#).  
17 On June 22, 2012, the Beals answered the United States' Second Amended  
18 Answer and Cross Complaint. ECF No. [34](#). Then on June 28, 2012, the  
19 Beals responded to the United States' dispositive motion. ECF No. [43](#).  
20 On June 28, 2012, the United States filed motions asking the Court to  
21 strike the Beals' untimely answer, ECF No. [34](#), and documents, ECF Nos.  
22 [41](#), [42](#), & [43](#), filed in response to the dispositive motion. On July 19,  
23 2012, the United States sought a stay of all deadlines pending the  
24 Court's ruling on the United States' previously-filed motions. ECF No.  
25 [55](#).

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1 **A. Motions to Strike**

2 The United States asks the Court to strike the Beals' June 22, 2012  
3 Answers to Defendant United States of America's Second Amended Answer and  
4 Cross Complaint, ECF No. [34](#), and the Beals' June 28, 2012 filings: 1)  
5 Declaration of Thomas J. Beal and Donna J. Beal in Opposition to Summary  
6 Judgment, ECF No. [41](#); 2) Plaintiffs' Responses to Statement of Material  
7 Facts, ECF No. [42](#); and 3) Plaintiffs' Memorandum in Opposition to Motion  
8 to Dismiss, for Summary Judgment on Cross Complaint, or Default Judgment,  
9 ECF No. [43](#). The Beals oppose the motion, contending 1) there was good  
10 cause for them to delay answering the United States' Second Amended  
11 Answer and Cross Complaint because the parties were attempting to resolve  
12 this lawsuit, and 2) the United States was aware of the Beals' claims and  
13 defenses. In their response, the Beals ask for an extension of time to  
14 file their Answer under Federal Rule of Civil Procedure 6(b)(1)(B). ECF  
15 No. [51](#) at 2.

16 Rule 6(b)(1)(B) permits the Court to extend a deadline if the  
17 requesting party "failed to act because of excusable neglect." Fed. R.  
18 Civ. P. 6(b)(1)(B). The Court is also guided by Rule 60(b) to determine  
19 whether the untimely answer should be accepted because the filing of a  
20 late answer is analogous to a motion to vacate a default. See *McMillen*  
21 *v. J.C. Penney Co., Inc.*, 205 F.R.D. 557, 558 (D. Nev. 2002) ("[T]he  
22 filing of a late answer is analogous to a motion to vacate a default  
23 because the party filing the last answer receives the same opportunity  
24 to present mitigating circumstances that it would have had if a default  
25 had been entered and it had moved under Rule 55(a) to set it aside."  
26 (internal quotations omitted)). Rule 60(b)(1) allows the Court to set

1 aside a judgment or order due to "mistake, inadvertence, surprise, or  
2 excusable neglect." Fed. R. Civ. P. 60(b)(1).

3 Whether the Court should accept the Beals' fourteen-month-overdue  
4 Answer is a very close question because not only was the answer  
5 excessively late but the United States already deposed the Beals and  
6 developed a litigation strategy based on the Beals' failure to file a  
7 timely answer to the Cross Complaint. Because there is a judicial  
8 preference for deciding matters on their merits when possible, the Court  
9 elects to accept the untimely Answer. *See Patapoff v. Vollstedt's, Inc.*,  
10 267 F.2d 863, 865 (9th Cir. 1959) (recognizing judicial policy in favor  
11 of resolving a case on its merits). Accordingly, the United States'  
12 motion to strike the untimely Answer is denied.

13 Second, in regard to the Beals' untimely documents filed in response  
14 to the United States' dispositive motion, the Court also accepts them.  
15 The Beals' counsel indicates that he was unfamiliar with this District's  
16 filing requirements and therefore was following the state court filing  
17 rules. If counsel participates in a lawsuit in the Eastern District of  
18 Washington, he must be familiar with the Local Rules and abide by the  
19 requirements set forth in the Court's Scheduling Order. Nonetheless,  
20 under the circumstances, the Court denies the United States' motion to  
21 strike the responsive documents.

22 **B. The United States' Dispositive Motion**

23 The United States asks the Court to dismiss the Beals' claims  
24 against it because the Court lacks subject matter jurisdiction and the  
25 Beals' Complaint fails to state a claim upon which relief can be granted  
26

1 and therefore should be dismissed under Federal Rules of Civil Procedure  
2 12(b)(1) and 12(b)(6), respectively.

3       The Court finds it lacks subject matter jurisdiction because 1) the  
4 Beals' claims relating to the United States' interference with the Beals'  
5 ability to comply with their Chapter 12 Plan must be heard by the  
6 Bankruptcy Court, see 11 U.S.C. § 350(b) ("A case may be reopened in the  
7 court in which such case was closed to administer assets, to accord  
8 relief to the debtor, or for other cause."), and 2) the Beals' other  
9 claims must be heard by the United States Court of Federal Claims  
10 pursuant to 28 U.S.C. §§ 1346(a)(2) and 1491(a)(1). See 28 U.S.C. §  
11 1491(a)(1) ("The United States Court of Federal Claims shall have  
12 jurisdiction to render judgment upon any claim against the United States  
13 founded . . . upon any express or implied contract with the United States  
14 . . . ."), and § 1346(a)(2) (granting exclusive jurisdiction to the  
15 United States Court of Federal Claims for civil claims against the United  
16 States that exceed \$10,000.00). The Beals' claims are founded on the  
17 mortgages, promissory notes, security agreements, and financing  
18 statements between the Beals and the United States—contracts with the  
19 United States. The Beals argue that they are not seeking damages  
20 exceeding \$10,000.00 from the United States because they are simply  
21 seeking an offset, and thus their claims against the United States need  
22 not be brought before the United States Court of Federal Claims under §  
23 1346(a)(2). The Court finds otherwise. The Beals seek a ruling that  
24 they owe less money to the United States than is required by the Chapter  
25 12 Plan because the amount of interest and principal owed to the United  
26 States was incorrectly calculated and the United States hindered their  
ability to earn income. If the Beals are granted their requested relief,

1 1) the amount they owe to the United States will be reduced by more than  
2 \$10,000.00, and 2) the United States will be required to incur expenses  
3 to assist the Beals in fully utilizing their land. Under the  
4 circumstances, the Court finds the Beals' claims against the United  
5 States qualify as claims against the United States that must be brought  
6 before the United States Court of Federal Claims.

7 For these reasons, the Court lacks jurisdiction to hear the Beals'  
8 claims against the United States. Because the Court finds it lacks  
9 subject matter jurisdiction, the Court will not address the United  
10 States' arguments relating to the Beals' failure to state a claim under  
11 Rule 12(b)(6). The Court grants the United States' dispositive motion  
12 and dismisses the Beals' claims against the United States, and the United  
13 States' counterclaims given that the United States' counterclaims are  
14 related to the Beals' claims and therefore the Court likewise lacks  
15 subject matter jurisdiction over the counterclaims.

16 **C. Motion to Stay**

17 Because the Court grants the United States' dispositive motion on  
18 jurisdictional grounds, the Court denies as moot the United States'  
19 Motion to Stay Proceedings Pending Ruling.

20 **D. Conclusion**

21 For the above-given reasons, **IT IS HEREBY ORDERED:**

22 1. The United States' Motions to Expedite, **ECF Nos. [35](#), [45](#), & [58](#)**,  
23 are **GRANTED**.

24 2. The United States' Motion to Dismiss, for Summary Judgment On  
25 Cross Complaint, or Default Judgment, **ECF No. [29](#)**, is **GRANTED**. The  
26 Beals' claims against the United States and the United States'  
counterclaims are **DISMISSED**.

